

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

09-CR-6192L

v.

PEDRO RODRIGUEZ,

Defendant.

Defendant Pedro Rodriguez (“Rodriguez”) was sentenced by this Court in 2010 principally to a term of 240 months imprisonment based on his plea to conspiracy to possess with intent to distribute one kilogram or more of heroin and five kilograms or more of cocaine. Rodriguez is currently serving his term at FCI Loretto.

On May 4, 2020, Rodriguez filed a motion (Dkt. #457), *pro se*, seeking compassionate release from imprisonment pursuant to 18 U.S.C. § 3582(c)(1)(A). The basis for the motion is the public health crisis involving the COVID-19 virus. The Government responded (Dkt. #459) opposing the motion and the Probation Office has filed its Report concerning Rodriguez’s status at FCI Loretto (Dkt. #460).

For several reasons, Rodriguez’s motion is denied. First of all, it appears that Rodriguez has failed to exhaust his administrative remedies by filing a request for release with the Warden or Bureau of Prisons. According to the Report from Probation, Rodriguez acknowledged to his case manager that he had not filed a request for relief with the Bureau of Prisons. For that reason alone, the motion should be denied.

But, even had there been an exhaustion, the motion would be denied. First of all, Rodriguez is relatively young, now 37 years of age. He is therefore not vulnerable because of advanced age. Furthermore, according to the Bureau of Prisons, Rodriguez is classified at the lowest medical care level. That classification includes inmates who are generally healthy and have limited medical needs. Medical records were referenced in Probation's Report and none of the health problems listed there, including nearsightedness and tooth decay are the types of severe preexisting conditions that make one more susceptible to contracting the virus.

Defendant bears the burden of proof to establish that there are extraordinary and compelling reasons to modify the originally-imposed sentence. Rodriguez has failed to carry that burden. As the Government points out in its Response, the staff at FCI Loretto appear to have significant procedures in place to deal with the virus. At this point, these procedures seem significant, thorough and successful. According to the Report from Probation, no inmates or staff have tested positive for the COVID-19 virus. Therefore, it does not appear that Rodriguez has any preexisting health issue that makes him more susceptible than any other individual to contract the virus. It also appears that FCI Loretto has taken significant steps to deal with the potential spread of the virus and that there are adequate medical staff there to deal with any issue relative to the pandemic.

CONCLUSION

Defendant Pedro Rodriguez's motion (Dkt. #457) for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) is DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is positioned above a horizontal line. The signature is fluid and cursive.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
June 4, 2020.